Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1698

RAYMOND MAYFIELD - - - - Petitioner

VERSUS

COMMONWEALTH OF KENTUCKY, Ex. Rel.
MARGIE R. PHELPS - - - - Respondent

On Petition for a Writ of Certiorari to the
Kentucky Supreme Court

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

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RAYMOND MAYFIELD - - - - *Petitioner*

v.

COMMONWEALTH OF KENTUCKY, EX. REL.
MARGIE R. PHELPS - - - - *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE KENTUCKY SUPREME COURT

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

May it please the Court:

PURPOSE OF THE BRIEF

The purpose of the petitioner's Reply Brief is to bring to the attention of the Court, what petitioner believes is, an apparent misconception of fact and law contained in respondent's Brief in Opposition.

PETITIONER'S REPLY

The respondent, in her Brief in Opposition, has taken issue with the fact that the constitutional question presented to this Court was raised belatedly before the Kentucky Courts. More particularly, the respondent at page 3 of her Brief, has indicated that the constitutional question was not raised by the petitioner until he filed his Petition for Rehearing before the Kentucky Supreme Court. That contention is somewhat true as far as it goes. By that, petitioner means that the identification of the Fifth and Fourteenth Amendments to our United States Constitution were first mentioned in the Petition for Rehearing to the Kentucky Supreme Court, but as the respondent concedes at page 4 of her Brief, "the record in this matter shows that all questions before the Court have been completely exhausted." The questions of equal protection and due process of law have been both implicit and explicit throughout these proceedings in the Courts below as respondent's statement indicates, as does the language of her second postulated issue in the case, which may be found on page 4 of her Brief. Even if the respondent's contentions were substantially correct, this Court has long recognized that federal questions can be raised at the Petition for Rehearing stage, and the petitioner calls the Court's attention to *Brinkerhoff-Faris Trust and Savings Company* v. *Hill*, 281 U. S. 673, 74 L.Ed. 1119, 50 S. Ct. 451, (1930) for a case on that point.

Additionally, the respondent has taken issue with the petitioner's interpretation of *Cohen* v. *Berlin*, 37

A. D. (2d) 567, 323 N. Y. Supp. (2d) 815. The petitioner will not restate that case, since he quoted the short opinion in its entirety in his original Petition, but will reiterate that the New York Courts concluded that the Cohen Agreement was believed to have been entered into as a single transaction, and because it subsequently involved other litigation, that Court vacated the order of filiation and thereafter restored the parties to their original positions. This relief is of the type that Raymond Mayfield is praying for from this Court, as he previously prayed from the Courts below. The petitioner believes that the opinions of the New York Courts and the Kentucky Courts are juxtaposed, and further believes that only this Court can resolve that conflict between the decisions of the respective states involved.

For some reason, both respondent and the Kentucky Supreme Court appear to believe that this case exclusively involves the rights of illegitimate children. More particularly, some moment has been spent by both discussing the fact that illegitimate children have the same rights as legitimate children. If this Court will pardon the play on words, this latter issue has never been at issue during any of the proceedings of this case. The petitioner has always been cognizant of the fact that the rights of legitimate children and illegitimate children are virtually the same and has so stated to the Kentucky Court as he did to this Court on page 4 of his original Petition.

The question before this Court, and the question before the Kentucky Courts, involves the rights of men,

who through compromise and negotiation, agree to a filiation order, such as the one in this case, that ostensibly finalizes litigation, only to learn subsequently that they are going to be brought before the Court time and time again on the basis of the very instrument that they originally thought concluded their litigation. This contractual question is all that is being placed before this Court for decision.

CONCLUSION

The petitioner does realize that the concepts discussed in this Reply are, perhaps, very similar to those first mentioned in his original Petition. However, because the respondent raised the issues involving the constitutional question and the rights of children, the petitioner felt compelled to readdress himself to these points. The petitioner believes that his question is properly before this Court, and further believes that this Court should accept jurisdiction and thereafter issue a Writ of Certiorari to review the opinion of the Supreme Court of Kentucky.

Respectfully submitted,

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